

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

EVAN AMBER OVERTON AND JOHN)
KEENAN OVERTON, CO-)
ADMINISTRATORS FOR THE ESTATE)
OF EZRA MICAH EL OVERTON,)
DECEASED,)

Plaintiffs,)

v.)

FISHER-PRICE, INC.;)

AND)

MATTEL, INC.

Defendant.)

CIVIL ACTION FILE NO.

1:19-cv-751

**PLAINTIFFS' RULE 26(a)(3) PRETRIAL DISCLOSURES, LIST OF WITNESSES AND
LIST OF EXHIBITS**

Plaintiffs Evan Amber Overton and John Keenan Overton, Co-Administrators for the Estate of Ezra Overton, Deceased, submit the following:

(i). Witnesses not previously provided in initial and expert designations:

Witness

1	Evan Overton John Keenan Overton 2121 North Westmoreland Street Arlington, VA 22213	Expect to present
2	Leah Dowdell 2121 North Westmoreland Street Arlington, VA 22213	Expect to present.

3	Fred Dowdell 2121 North Westmoreland Street Arlington, VA 22213	Expect to present
4	Gary Deegear	May call if the need arises
5	Joel A. Taft Fisher-Price, Inc.	Expect to present
6	Roy Benaroch, M.D.- lay testimony re: notice of defect	Expect to present
7	Experts designated by plaintiffs pursuant to Rule 26(a)(2)	Expect to present
8	Other incident witnesses identified in Bates Nos. OV000570-571, 574-575, 1548, 2509-2547, 2550-2604, 2605-2612, 3056-3066, 3244-3265, 12633-12875, 12876-13623, 26841-27852, 27855-27803	Expect to present
9	Fisher-Price, Inc. Mattel, Inc.	May call if the need arises
10	Vivian Becker	May call if the need arises
11	Hilton Overton Nola Overton	May call if the need arises
12	Michael Overton Tonya Overton	May call if the need arises
13	Michelle Schepis, Office of the Chief Medical Examiner, Northern District	May call if the need arises
14	Laura Hackfield 8246 The Midway Annandale, VA 22003	May call if the need arises
15	Jocelyn Posthumus, M.D. Office of the Chief Medical Examiner, Northern Region	May call if the need arises
16	Jenny Zygota	May call if the need arises
17	Det. J. Thornton	May call if the need arises

(ii). Designation of witnesses Plaintiffs expect to present by deposition

1	Fisher-Price, Inc. Mattel, Inc.	To be taken stenographically on January 22-24, 2020.
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2	Catherine Pilarz Fisher-Price, Inc.	To be taken stenographically on January 22-24, 2020.
3	Michael Steinwachs Fisher-Price, Inc.	To be taken stenographically on January 22-24, 2020.
4	Linda Chapman Fisher-Price, Inc.	To be taken stenographically on January 22-24, 2020.
5	Inez M. Tenenbaum	
6	Ronda Strauss	

(iii). Identification of each document or other exhibit [Note: all documents identified by Bates Number includes the unredacted version produced pursuant to Court Order]

1	The Rock 'n Play Sleeper in which baby Overton died	Expect to offer
2	Warning Label from the Sleeper	Expect to offer
3	All alternative Warning Labels created by Defendants, including all warning labels for all model Rock 'n Plays and for all countries, including but not limited to: OV000438-448, OV000475-489, 1020, 1021, 2034-2041	May offer if need arises
4	Photographs and videos of baby Overton produced in discovery, including the last photograph taken of him alive (See Exhibit 11 to Evan and Keenan Overton depositions) and the following: IMG_1257 IMG_3081 IMG_3104 IMG_3180 IMG_3268 IMG_3292 IMG_3313 IMG_3411 IMG_3440 IMG_3455 IMG_3459 IMG_3597 IMG_3621 IMG_3716 IMG_3733 IMG_3740 IMG_3742 IMG_3745 IMG_3771 IMG_3795 IMG_3796	Expect to offer
5	Photographs of the subject sleeper	Expect to offer
6	Prototype BGB20 Rock 'n Play Sleeper	Expect to offer
7	Photograph of subject Sleeper next to prototype Sleeper	Expect to offer
8	Videos and photographs of babies standing in RNP Sleeper while	Expect to offer

	restrained and unrestrained, e.g., FPI_002209 in Goodwin, videos produced by Defendants in response to December 13, 2020 Order granting Motion to Compel, including OV25493, 25494 and similar videos.																								
9	<p>All documents produced by Defendants between 12/20/2020 and 12/23/2020 OV-0013624 to 0028073)¹ in response to the Court’s Order striking Defendants’ objections and ordering Defendants to produce , <i>inter alia</i>, unredacted versions of all incident reports, all testing documents and all communications with CPSC regarding the Recall, including but not limited to:</p> <table><tr><td>Mattel-OV-0000375-399</td></tr><tr><td>Mattel-OV-0000569-575</td></tr><tr><td>Mattel-OV-0001002-1019</td></tr><tr><td>Mattel-OV-0002056-2081</td></tr><tr><td>Mattel-OV-0002216-2488</td></tr><tr><td>Mattel-OV-0002550-2634</td></tr><tr><td>Mattel-OV-0003055-3087</td></tr><tr><td>Mattel-OV-0003248-3265</td></tr><tr><td>Mattel-OV-0007571-7644</td></tr><tr><td>Mattel-OV-0019576-19583</td></tr><tr><td>Mattel-OV-0019284-19291</td></tr><tr><td>Mattel-OV-0019298-19313</td></tr><tr><td>Mattel-OV-0019332-19347</td></tr><tr><td>Mattel-OV-0019350-19365</td></tr><tr><td>Mattel-OV-0019367-19374</td></tr><tr><td>Mattel-OV-0019376-19383</td></tr><tr><td>Mattel-OV-0019386-19393</td></tr><tr><td>Mattel-OV-0019590-19605</td></tr><tr><td>Mattel-OV-0019611-19618</td></tr><tr><td>Mattel-OV-0019634-20126</td></tr><tr><td>Mattel-OV-0024705-24709</td></tr><tr><td>Mattel-OV-0026841-27852</td></tr><tr><td>Mattel-OV-0027855-28073</td></tr></table>	Mattel-OV-0000375-399	Mattel-OV-0000569-575	Mattel-OV-0001002-1019	Mattel-OV-0002056-2081	Mattel-OV-0002216-2488	Mattel-OV-0002550-2634	Mattel-OV-0003055-3087	Mattel-OV-0003248-3265	Mattel-OV-0007571-7644	Mattel-OV-0019576-19583	Mattel-OV-0019284-19291	Mattel-OV-0019298-19313	Mattel-OV-0019332-19347	Mattel-OV-0019350-19365	Mattel-OV-0019367-19374	Mattel-OV-0019376-19383	Mattel-OV-0019386-19393	Mattel-OV-0019590-19605	Mattel-OV-0019611-19618	Mattel-OV-0019634-20126	Mattel-OV-0024705-24709	Mattel-OV-0026841-27852	Mattel-OV-0027855-28073	Expect to offer
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Mattel-OV-0024705-24709																									
Mattel-OV-0026841-27852																									
Mattel-OV-0027855-28073																									
10	All emails referencing meetings and communications with and by Gary Deegear, M.D. during the product concept through development stage, including FPI_000243-245, FPI_000555-557 and 559-560, FPI_000565-566, and FPI_000568, OV000243-245, OV000555-568, 3038, 3042	Expect to offer																							
11	Communications by and between Roy Benaroch and defendants or concerning Roy Benaroch, including: OV000540, 569, 642-644, 2895, 3055, 3266-3272.	Expect to offer																							
12	All Hazard Analysis and Safety Audit Reports related to the RNP,	Expect to offer																							

¹ Plaintiffs are forced by Defendants' actions to reserve their right to review late-produced documents and supplement or amend this Disclosure. See Declaration of Michael G. Phelan attached as Exhibit A.

	including – OV000551-552, 576, 577-583, 584-586, 587-589, 590-594, 596, 3034-3035, 3122-3142.	
13	Notice of incidents of infant fatal or near suffocation, asphyxiation, rolling over, getting out of position or falling out of a RNP Sleeper – in addition to the above Bates # ranges, see- OV000570-571, 574-575, 1548, 2509-2547, 2550-2604, 2605-2612, 3056-3066, 3244-3265, 12633-12875, 12876-13623, 26841-27852, 27855-27803 and all unredacted counterparts,.	Expect to offer
14	Quality and Safety Operating Procedure for RNP Sleeper: OV0003143-3152	Expect to offer
15	Products Requirements document for RNP Sleeper: OV0003153-3187	Expect to offer
16	Patent Applications for Rock ‘n Play Sleeper, including: FPI_000041-70, OV0003088 et seq.	Expect to offer
17	All communications by and between or concerning defendants and Royal College of Midwives, including – OV000657-660, 3361-3364	Expect to offer
18	All communications by and between or concerning defendants and Health Canada, including but not limited to: OV0001022-1040, 2613-2653, 2654-2659, 3320-3343, 12566-12568	Expect to offer
19	All communications by and between or concerning defendants and Queensland, Australia, including but not limited to: OV0003339-3360	Expect to offer
20	Documents regarding and concerning on-site testing with babies in a RNP sleeper, including those identified by Defendants in Response to RFPD Nos. 15, 18, 19, 27 and 35.	Expect to offer
21	Documents regarding and concerning in-home pilot testing with babies in a RNP sleeper, including those identified by Defendants in Response to RFPD Nos. 15, 18, 19, 27 and 35 and OV000-3365-3449	Expect to offer
22	Documents regarding and concerning Defendants’ research of infant rollover, infant positioning, infant fit and more as referenced in Defendants’ Answer to Interrogatory No. 5 and as identified in Bates # ranges above.	Expect to offer
23	All communications by and between Defendants and the Consumer Products Safety Commission regarding and concerning the Rock ‘n Play Sleeper, including but not limited to: OV0001041-1044, 19576-19583	Expect to offer
24	RNP Sleeper Brochures, including but not limited to: OV0001890-1913, 1922-1933,	Expect to offer
25	All documents regarding and concerning Defendants’ attempts to influence standards pertaining to the RNP Sleeper, including but not limited to: OV0005227- 5320, 5327-5333, 5370-5376, 5401-5412, 5461-5470 and 7645-8222	May offer if need arises
26	Snugapuppy Model: OV00012596-597	May offer if need arises
27	My Little Snagabunny Model: OV000600-601	May offer if need arises
28	Safari Dreams Model: OV00012622-623	May offer if need arises
29	Sweet Surroundings Monkey Deluxe Auto Model: OV00012626-627	May offer if need arises
30	RNP Sleeper packaging – indicating “designed for all-night sleep,” “baby can sleep at a comfortable incline all night long,” “Extra-plush	Expect to offer

	fabrics”		
31	Exhibits from the Rule 30(b)(6) deposition of defendants, which have not yet occurred.		Expect to offer
32	All documents produced by Defendants including but not limited to: Mattel-OV-0000001 - 0028204		Expect to offer
33	Fisher-Price webpage - A Design Story – Linda Chapman		Expect to offer
34	Fisher-Price webpage – Research is at the Heart of Development		Expect to offer
35	Fisher-Price webpage - Listening to Consumers		Expect to offer
36	Mattel OV12566 - OV12568		Expect to offer
37	ASTM 2194-07		Expect to offer
38	Mattel OV12547- OV12554		Expect to offer
39	Mattel OV1547 – OV1561		Expect to offer
40	Safety Standards for Bassinets and Cradles: Notice of Proposed Rule Making. Source: Regulations.gov		Expect to offer
41	Mattel OV0002087		Expect to offer
42	Fisher-Price webpage Safari Dream Rock ‘N Play		Expect to offer
43	Mattel OV0000568		Expect to offer
44	RNP Sleeper box actual sample box		Expect to offer
45	Article on Influence of Head-Neck Posture on Airflow and Pulmonary Mechanics in Preterm Neonates. F. Reitere, MD, Soraya Abbasi, MD, and Vinod K. Bhutani, MD		Expect to offer
46	Mattel-OV-0000041-0000070		May offer if need arises
	Mattel-OV-0000071-0000077		
	Mattel-OV-0000089-0000105		
	Mattel-OV-0000115-0000180		
	Mattel-OV-0000243-0000245		
	Mattel-OV-0000246-0000279		
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Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2020, I electronically transmitted the attached document to the Clerk's Office using CM/ECF System for filing and distribution to the following registered participants of the CM/ECF System:

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